

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HOLLY RYDMAN, individually and on
behalf of a class of similarly situated
individuals,

Plaintiffs,

v.

CHAMPION PETFOODS USA, INC., a
Delaware corporation, and CHAMPION
PETFOODS LP, a Canadian limited
partnership,

Defendants.

CASE NO. C18-1578 RSM

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS COUNTS IV AND
VI OF PLAINTIFFS' SECOND
AMENDED COMPLAINT

I. INTRODUCTION

This matter is before the Court on Defendants' Motion to Dismiss Counts IV and VI of Plaintiffs' Second Amended Complaint. Dkt. #56. Plaintiffs oppose the motion and have requested oral argument. Dkt. #58. The Court finds oral argument unnecessary to its resolution of this matter and denies the request. *See* Local Rules W.D. Wash. LCR 7(b)(4). Having considered the matter, the Court grants Defendants' motion.

II. BACKGROUND

Defendants manufacture premium dry dog food which they sell at prices higher than other brands of premium dry dog food. Dkt. #46 at ¶¶ 20, 47. Defendants marketed these dog foods

1 with phrases such as: “Ingredients We Love [From] People We Trust;” “Nourish as Nature
 2 Intended;” “Delivering Nutrients Naturally;” “Biologically Appropriate™;” and “Fresh Regional
 3 Ingredients.” *Id.* at ¶ 11. Plaintiffs allege that they viewed these representations on the packaging
 4 of Defendants’ premium dry dog food and relied on the representations in deciding to initially
 5 purchase Defendants’ dog food from third-party retailers. *Id.* at ¶¶ 7–10. Plaintiffs thereafter
 6 continued to buy Defendants’ dog food from retailers for several years. *Id.*

7 Plaintiffs allege that Defendants “[t]argeted consumers who were willing to pay the
 8 Defendants’ premium prices” and used improper marketing practices to make “misleading
 9 representations and warranties” about the quality of their dog food. *Id.* at ¶ 2. Plaintiffs allege
 10 that Defendants’ “dog food contained and/or had a material risk of containing non-conforming
 11 ingredients and contaminants, such as: (1) Heavy Metals; (2) non-fresh ingredients; (3) non-
 12 regional ingredients; (4) BPA; and/or (5) pentobarbital.” *Id.* at ¶ 12. Plaintiffs allege that
 13 Defendants failed to disclose and intentionally omitted that their dog food could contain these
 14 “non-conforming ingredients and contaminants” and that Plaintiffs relied on the packaging’s
 15 omissions. *Id.* at ¶¶ 13–14.

16 On these allegations, Plaintiffs brought claims for violation of the Washington Consumer
 17 Protection Act, negligent misrepresentation, fraudulent misrepresentation, fraudulent
 18 concealment, breach of express warranty, breach of implied warranty, and unjust enrichment. *Id.*
 19 at ¶¶ 247–327. Defendants seek dismissal of Plaintiffs’ fraudulent concealment and breach of
 20 implied warranty claims. Defendants’ motion does not seek dismissal of Plaintiffs’ other claims.

21 III. DISCUSSION

22 A. Legal Standard for Motion to Dismiss

23 Dismissal under Federal Rule of Civil Procedure 12(b)(6) “can be based on the lack of a
 24 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”

1 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *see also* FED. R. CIV. P.
2 8(a)(2). While considering a Rule 12(b)(6) motion, the court accepts all facts alleged in the
3 complaint as true and makes all inferences in the light most favorable to the non-moving party.
4 *Baker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (citations omitted).
5 The court is not required, however, to accept as true a “legal conclusion couched as a factual
6 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
7 550 U.S. 544, 555 (2007)). “Determining whether a complaint states a plausible claim for relief
8 will . . . be a context-specific task that requires the reviewing court to draw on its judicial
9 experience and common sense.” *Id.* at 679 (citations omitted).

10 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
11 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678 (quoting
12 *Twombly*, 550 U.S. at 570). This requirement is met when the plaintiff “pleads factual content
13 that allows the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). The complaint need not include
15 detailed allegations, but it must have “more than labels and conclusions, and a formulaic
16 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. “The
17 plausibility standard is not akin to a probability requirement, but it asks for more than a sheer
18 possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are
19 merely consistent with a defendant’s liability, it stops short of the line between possibility and
20 plausibility of entitlement to relief.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556,
21 557). Absent facial plausibility, a plaintiff’s claims must be dismissed.

22 **B. Plaintiffs’ Fraudulent Concealment Claim**

23 Applicable here, Federal Rule of Civil Procedure 9 further requires that Plaintiffs plead
24 “fraud or mistake” with particularity. FED. R. CIV. P. 9(b). This generally requires allegations

“specific enough to give defendants notice of the particular misconduct [and] must be accompanied by the who, what, when, where, and how of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation marks and citations omitted). The requirements are relaxed in fraudulent omission cases, however, because plaintiffs generally will not know the specific circumstances under which factual material was omitted, as they would in a false representation claim. *Carideo v. Dell, Inc.*, 706 F. Supp. 2d 1122, 1132 (W.D. Wash. 2010) (citing *Falk v. Gen Motors Corp.*, 496 F. Supp. 2d 1088, 1098–99 (N.D. Cal. 2007)).

A fraudulent concealment claim is premised on a duty to disclose. *See Schreiner Farms, Inc. v. Am. Tower, Inc.*, 173 Wash. App. 154, 163, 293 P.3d 407, 412 (2013) (fraudulent concealment may be established by the nine elements of fraud¹ or breach of “an affirmative duty to disclose a material fact”) (quoting *Crisman v. Crisman*, 84 Wash. App. 15, 21, 931 P.2d 163 (1997)). “Ordinarily, the duty to disclose a material fact exists only where there is a fiduciary relationship and not where the parties are dealing at arm’s length.” *See Tokarz v. Frontier Fed. Sav. & Loan Ass’n*, 33 Wash. App. 456, 463–64, 656 P.2d 1089, 1094–95 (1982) (citing *Oats v. Taylor*, 31 Wash.2d 898, 903, 199 P.2d 694 (1948)). However, Washington courts sometimes

find a duty to disclose where the court can conclude there is a quasi-fiduciary relationship, . . . where a special relationship of trust and confidence has been developed between the parties, . . . where one party is relying upon the superior specialized knowledge and experience of the other, . . . where a seller has

¹ Washington law requires fraud to be proven with clear, cogent, and convincing evidence of:

(1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker’s knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff’s ignorance of its falsity; (7) plaintiff’s reliance on the truth of the representation; (8) plaintiff’s right to rely upon it; and (9) damages suffered by the plaintiff.

Stiley v. Block, 130 Wash. 2d 486, 505, 925 P.2d 194, 204 (1996) (citation omitted).

1 knowledge of a material fact not easily discoverable by the buyer, . . . and where
2 there exists a statutory duty to disclose.”

3 *Favors v. Matzke*, 53 Wash. App. 789, 796, 770 P.2d 686, 690 (1989) (citations omitted).²

4 The Court agrees with Defendants that the relationship between the parties does not give
5 rise to a duty for Defendants to disclose the possible presence of “non-conforming ingredients
6 and contaminants.” Several theories are easily disposed of. Plaintiffs do not allege a factual
7 basis for a fiduciary or quasi-fiduciary relationship with Defendants. Plaintiffs do not sufficiently
8 allege facts establishing any special relationship of trust and confidence at the time they were
9 allegedly misled by Defendants’ material omissions.³ Nor do Plaintiffs sufficiently allege that
10 they relied on Defendants’ specialized knowledge and experience manufacturing dog food in
11 concluding that the dog food could not possibly contain “non-conforming ingredients and
12
13

14 ² The cases cited by the *Favors* court, which the Court has otherwise omitted, clearly deal with
15 substantial relationships between the parties and support the Court’s conclusion in this case. *See*
16 *Boonstra v. Stevens–Norton, Inc.*, 64 Wash. 2d 621, 393 P.2d 287 (1964) (duty to disclose in
17 quasi-fiduciary relationship between loan broker and lender because lender relied on experience
18 and knowledge of broker); *Salter v. Heiser*, 36 Wash.2d 536, 219 P.2d 574 (1950) (lessor had
19 duty to disclose existing liquor license when representing to inexperienced lessee that he could
20 sell liquor on the premises); *Hutson v. Wenatchee Fed. Savs. & Loan Ass’n*, 22 Wash. App. 91,
588 P.2d 1192 (1978) (lender had duty to disclose because of “complex relationship” with
borrower); *Sorrell v. Young*, 6 Wash. App. 220, 491 P.2d 1312 (1971) (real property seller had a
duty to disclose prior filling of land where the fact was “not apparent or readily ascertainable”);
and *Kaas v. Privette*, 12 Wash. App. 142, 529 P.2d 23 (1974) (seller of corporate stock had a
statutory duty to disclose material facts).

21 ³ Plaintiffs make much of the “relationship of trust and confidence” between Defendants and
22 their customers. Dkt. #58 at 12. But, the Court finds it significant that Plaintiffs allege
23 Defendants’ marketing fraudulently concealed the possible presence of “non-conforming
24 ingredients and contaminants” at both the time of Plaintiffs’ first purchase and several years later
at the time of their last purchase of Defendants’ dog food. Plaintiffs do not allege any interactions
with Defendants prior to their first purchase, much less facts giving rise to a special relationship.
Nor do they allege any actions that altered the relationship of the parties during the time they
purchased Defendants’ dog food.

1 contaminants.”⁴ Lastly, Plaintiffs have not adequately alleged that a relevant statute obligated
2 Defendants to disclose the information that Plaintiffs maintain was fraudulently concealed.⁵

3 Necessitating slight consideration, Plaintiffs argue that material facts as to the contents
4 of Defendants’ dog food were available only to Defendants and that those facts were not easily
5 discoverable by Plaintiffs. But Plaintiffs could have determined precisely what was in
6 Defendants’ dog food at any time by testing a small amount of it. This contrasts starkly with the
7 other cases in which this Court has found a duty for a manufacturer to disclose material facts.
8 *See Zwicker v. Gen. Motors Corp.*, No. 07-cv-291-JCC, 2007 WL 5309204, at *3 (W.D. Wash.
9 July 26, 2007) (sufficient allegations of fraudulent concealment where purchaser of a vehicle is
10 not able disassemble and inspect the vehicle for defects); *Carideo*, 706 F. Supp. 2d 1122 (same
11 result, where purchasers cannot take apart and inspect the components of a computer for defects).
12 Defendants’ knowledge did not give rise to a duty to disclose here.

13 As a result, the Court finds that Plaintiffs’ Second Amended Class Action Complaint fails
14 to adequately state a claim for relief based on fraudulent concealment. Count IV of Plaintiffs’
15 Second Amended Class Action Complaint is dismissed.

16 **C. Breach of Implied Warranty Claims**

17 Defendants argue that Plaintiffs’ implied warranty claim fails for the simple reason that
18 there is no privity between Defendants and Plaintiffs: “Plaintiffs concede that they are not in
19

20 ⁴ In fact, Plaintiffs allege that they instead relied on the Defendants’ marketing phrases in
21 deciding to purchase Defendants’ dog food. Similarly, Plaintiffs have not alleged any facts
22 establishing a basis for relying on the specialized knowledge and experience of Defendants in
23 relation to other manufactures of premium dry dog food.

24 ⁵ Plaintiffs generally point to Washington’s Consumer Protection Act, which makes a “knowing
failure to reveal something of material importance [] ‘deceptive’ within the CPA.” Dkt. #58 at
13 (quoting *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162
Wash. 2d 59, 75, 170 P.3d 10 (2007)) (quotation marks omitted). But nothing in this order
prevents Plaintiffs from pursuing their Consumer Protection Act claims.

1 privity with Defendant. [Dkt. #58 at 11]. However, in a last-ditch effort to avoid dismissal of
2 this claim, Plaintiffs implausibly contend that [sic] have pled facts demonstrating that they are
3 third-party beneficiaries of an underlying, unidentified contract between [Defendants] and the
4 retailers that sold its food.” Dkt. #59 at 6.

5 Under Washington law,

6 “[a] third-party beneficiary is one who, though not a party to the contract, will
7 nevertheless receive *direct* benefits therefrom.” . . . It is insufficient that
8 performance of a contract may benefit a third party; rather, the contract must have
been entered for that party’s benefit, or the benefit must be a direct result of
performance within the parties’ contemplation.”

9 *Key Dev. Inv., LLC v. Port of Tacoma*, 173 Wash. App. 1, 29, 292 P.3d 833, 846–47 (2013)
10 (internal citations omitted). In the manufacturing context, Washington courts look to the “sum
11 of interaction and expectations between the purchaser and the manufacturer: [whether] the
12 manufacturer knew the identity, purpose, and requirements of the purchaser’s specifications and
13 shipped the [item] directly to the purchaser.” *Touchet Valley Grain Growers, Inc. v. Opp &*
14 *Seibold Gen. Const., Inc.*, 119 Wash. 2d 334, 345, 831 P.2d 724, 730 (1992).

15 Plaintiffs’ argument that Defendants “knew the identity, purpose, and requirements of the
16 [Plaintiffs’] specifications” because Defendants marketed their dog food to “Pet Lovers,” such
17 as Plaintiffs, is not persuasive. Identifying a group of potential customers is a far cry from
18 identifying third-party beneficiaries.⁶ Nor do Plaintiffs identify any specific contract purporting
19 to make them third-party beneficiaries. Plaintiffs have failed to adequately plead a claim for
20 relief based on breach of an implied warranty. Count VI of Plaintiffs’ Second Amended Class
21 Action Complaint is dismissed.

22
23 ⁶ Nonsensically, extending third-party beneficiary status to all “Pet Lovers” would be over and
24 under inclusive. “Pet Lovers” who never interacted with Defendants or their products would be
third-party beneficiaries. Yet purchasers of Defendants’ dog food that did not self-identify as
“Pet Lovers” would not be third-party beneficiaries. Plaintiffs’ theory is unworkable.

IV. CONCLUSION

Having considered the motion, the relevant briefing, and the remainder of the record, the Court hereby finds and ORDERS that Defendants' Motion to Dismiss Counts IV and VI of Plaintiffs' Second Amended Complaint (Dkt. #56) is GRANTED. Counts IV and VI of Plaintiffs' Second Amended Class Action Complaint (Dkt. #46) are DISMISSED. Plaintiffs' other claims remain.

Dated this 29th day of July, 2020.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE